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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT 940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 51, Reading, Pennsylvania)	

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To: Administrative Law Judge
Richard L. Sippel

MASS MEDIA BUREAU'S COMMENTS ON
REQUEST FOR PERMISSION TO FILE APPEAL

1. On September 13, 1999, Adams Communications Corporation ("Adams") filed a request for permission to file appeal. By Order, FCC 99M-53, the presiding Administrative Law Judge ("ALJ") requested that Reading Broadcasting, Inc. ("RBI") and the Mass Media Bureau ("Bureau") file reply comments by September 27, 1999. In accordance with the Order, the Bureau submits the following comments.

2. Background. Adams had sought to add two issues to this proceeding. The first was whether, in light of adjudicated misconduct concerning RBI's "dominant principal and controlling stockholder," Micheal Parker ("Parker"), RBI was qualified to remain a licensee. The second was whether Parker engaged in a pattern of misrepresentation and/or lack of candor in repeatedly failing to advise the Commission of

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the actual nature and scope of previously adjudicated misconduct and, if so, the effect of such on RBI's qualifications to remain a licensee.

3. By Memorandum Opinion and Order, FCC 99M-49, released September 3, 1999 ("MO&O"), the presiding ALJ denied Adams' motion. The MO&O concluded that Adams' motion did not contain specific allegations of fact necessary to support addition of the issues. As to the first requested issue, the MO&O observed that the proceedings Adams relied upon, namely, Religious Broadcasting Network, 3 FCC Rcd 4085, 4090 (Rev. Bd. 1988) ("Religious"); Mt. Baker Broadcasting Co., Inc., 3 FCC Rcd 4777 (1988) ("Mt. Baker"), were concluded some 11 years ago. Applying the general limitations period used in assessing character, the MO&O concluded that the matters referenced in Religious and Mt. Baker were not of sufficient gravity to warrant addition of an issue. As an additional reason for not adding the issue, the MO&O cited the Bureau's May 22, 1997, grant of an assignment application involving a television station in Norwell, Massachusetts, in which the seller was controlled by Parker. In this regard, the MO&O noted that Bureau granted the Norwell application, notwithstanding the Commission's recent determination that "[s]erious character questions also remain regarding the assignee, Parker/TIBS." Two If By Sea Broadcasting Corporation, 12 FCC Rcd 2254 (1997) ("TIBS"). The MO&O determined that the Bureau's action in the Norwell matter, coupled with the absence of an issue in the Hearing Designation Order for the instant proceeding, suggested that the Bureau "specifically decided not to set the issues for formal adjudication." Order at para. 14.

4. With respect to the second requested issue, the MO&O framed the argument for adding the issue as whether Parker went far enough in "describing the contents of

adjudicatory documents that were known to the Bureau staff to exist at a time when Parker was seeking a license.” Order at para. 17. In this regard, the “adjudicatory documents” in question refer to the Religious and Mt. Baker decisions. The MO&O concluded that those decisions were sufficiently identified by the applicants/Parker “to have been timely located and considered by the Bureau before” the grant of any of the applications. The MO&O also concluded that the absence of citations in the descriptions supplied by the applicants/Parker was not significant. In this regard, the MO&O speculated that it was reasonable to infer that the Bureau's staff were aware of the adverse findings concerning Parker because of the awareness about Parker subsequently displayed in the TIBS and Norwell decisions.

5. Unquestionably, the Order is an interlocutory ruling. Section 1.301(b) of the Commission’s Rules provides that an appeal from such a ruling can occur only if allowed by the presiding ALJ. The request to allow an appeal must “contain a showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.” Should the presiding ALJ determine that an interlocutory appeal is justified, he may either allow the appeal or modify the underlying ruling.

6. With respect to the first requested issue, the Bureau does not believe that Adams has met the first prong of the test inasmuch as its proposed appeal does not present a new or novel question of law or policy. The first issue Adams seeks is essentially a character issue. Specifically, Adams wants the Commission to focus on RBI’s character, which, in Adams’ view, is deficient because Parker was found to have engaged in deception. In this regard, however, the Commission has determined that, with

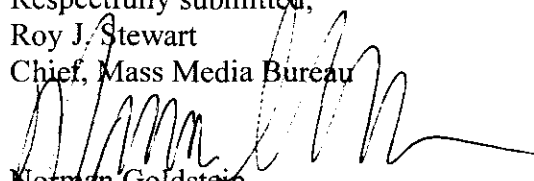
respect to character inquiries, a ten-year limitation should apply to consideration of past conduct. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1229 (1986) (subsequent history omitted). Here, the conduct attributed to Parker, which is described in the Religious and Mt. Baker decisions, occurred more than 11 years before the motion was filed. Hence, that conduct, however reprehensible, is no longer relevant in assessing RBI's character. Accordingly, the Order did not err in denying Adams' motion to add an issue to consider the impact of Parker's misconduct and no appeal of that ruling should be allowed.

7. With respect to the second requested issue, the Bureau contended that Adams had presented sufficient information to raise a substantial and material question of fact; namely, whether Parker lacked candor in various applications filed subsequent to the release of the Religious and Mt. Baker decisions. In this regard, the Bureau believed that the key question was not whether Parker falsely described the ultimate result of the Religious and Mt. Baker decisions as suggested by the Order. Rather, the key question is whether the descriptions as a whole fairly apprised the staff and any casual reader that they should read the referenced decisions and thereby gain a better appreciation of Parker's activities before making licensing decisions. In the Bureau's view, they did not. More importantly, the information Parker did not include in those applications was so negative that its omission suggests that Parker deliberately sought to conceal it from the staff. *See* Mass Media Bureau's Comments on Motion to Enlarge, filed August 11, 1999, para. 8. The Bureau continues to believe that to be the case. Hence, the failure to add the


requested issue could ultimately lead to remand should an exception be raised regarding that failure.¹

8. Accordingly, the Bureau opposes grant of an appeal with respect to denial of the first requested issue by Adams. With respect to the second requested issue, the Bureau believes the better course would be modification of the ruling in the Order and addition of that issue.

Respectfully submitted,
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¹ RBI argues in its "Opposition to Motion to Enlarge Issues," filed August 11, 1999, and RBI's "Reply to Mass Media Bureau's Comments on Adams' Motion to Enlarge Issues," filed August 23, 1999, that Parker was literally correct in his description of the Religious decision. In this regard, RBI accurately notes that the Board apparently did nothing more than deny integration credit to the Parker-sponsored applicant. Religious, 3 FCC Rcd at 4090. However, RBI also concedes that the Religious decision used rather scathing language in concluding that Parker, a supposed consultant, was the "true kingpin" of the applicant and that the applicant was a "travesty" and a "hoax." Id. By failing even to hint that such was the case in subsequent applications, Parker clearly sought to avoid a closer look at the Religious decision.

CERTIFICATE OF SERVICE

Talya Lewis, secretary of the Mass Media Bureau's Complaints and Political Programming Branch certifies that she has on this 27th day of September, 1999, sent by first class United States mail (or by hand) copies of the foregoing "Mass Media Bureau's Comments on Request for Permission to File Appeal" to:

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